

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 14, 2004

SENATE BILL

No. 1150

Introduced by Senator Burton

January 26, 2004

An act to add Article 2.5 (commencing with Section 14440) to Chapter 3 of Division 6 of the Business and Professions Code, relating to lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as amended, Burton. Lender names and trademarks.

Existing law, the Trademark Law, provides for the registration of a trademark with the Secretary of State. Under existing law, the owner of a registered mark may bring a civil action for the unauthorized use of the mark.

This bill would prohibit the use of, or reference to, the trade name or trademark of a lender, as defined, in a written solicitation to a consumer, subject to specified exceptions. The bill would prohibit the use of the name of a lender, or the use a similar name, in an advertisement or solicitation to a consumer. The bill would also prohibit the use of or reference to, loan information of a consumer in a solicitation for services or products, subject to specified exceptions. The bill would authorize *the recovery of actual damages and would authorize injunctive relief for a violation of these provisions. The bill would authorize a prevailing plaintiff in an action to recover costs and reasonable attorney's fees as determined by the court.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 14440) is added to Chapter 3 of Division 6 of the Business and Professions Code, to read:

Article 2.5. Lender Names and Trademarks

14440. “Lender” as used in this article, includes a bank, savings and loan association, savings bank, credit union, industrial bank, or other lender licensed to make loans in California or a subsidiary or an affiliate of one of those entities.

14441. (a) No person shall use or reference the trade name or trademark of a lender in a written solicitation to a consumer for services or products without the consent of the lender, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the trade name or trademark *in the* solicitation, including on an envelope or through an envelope window containing the solicitation.

(b) No person shall use the name of a lender or a name similar to that of a lender in an advertisement or solicitation to a consumer for services or products if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(1) The lender’s sponsorship, affiliation, connection, or association with the person using the name.

(2) The lender’s approval or endorsement of the person using the name or the person’s services or products.

14442. No person shall use or reference a consumer’s loan number or loan amount, whether or not publicly available, in a solicitation for services or products without the consent of the lender *or the consumer*, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name, and states that the consumer’s loan information was not provided to that person by

1 that lender. This statement shall be made in close proximity to, and
2 in the same or larger font as, the first and most prominent use or
3 uses of the consumer's loan information in the solicitation,
4 including on an envelope or through an envelope window
5 containing the solicitation.

6 14443. It is not a violation of this article for a person in an
7 advertisement or solicitation for services or products to use the
8 name or trade name of a lender without the statement described in
9 subdivision (a) of Section 14441 if that use is exclusively part of
10 a comparison of like services or products in which the person
11 clearly and conspicuously identifies itself.

12 14444. (a) A person who violates Section 14441 or 14442
13 shall be subject to an injunction against that use. In an action to
14 enjoin a violation of subdivision (a) of Section 14441 or Section
15 14442, it is not necessary to allege or to prove actual damage to the
16 plaintiff, and irreparable harm and interim harm to the plaintiff
17 shall be presumed. In action to enjoin a violation of subdivision (b)
18 of Section 14441, affidavits that show consumers were confused,
19 mistaken, or deceived as to a matter described in subdivision (b)
20 of Section 14441 is prima facie evidence of damage and injury to
21 the plaintiff. In addition to injunctive relief, the plaintiff is entitled
22 to recover in the action the amount of the actual damages, if any,
23 it sustained.

24 (b) A prevailing plaintiff in an action brought under this article
25 is entitled to recover its costs and reasonable attorney's fees ~~from~~
26 ~~the other party~~ *as the court may determine.*

